Supreme Court, U.S.
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NO. 08-623

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IN THE
UNITED STATES SUPREME COURT

STEPHANIE STUCKY,
PLAINTIFF-PETITIONER

vs.

DEPARTMENT OF EDUCATION, STATE OF HAWAII, ET. AL.
DEFENDANTS - RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES NINTH CIRCUIT COURT ORDER UPHOLDING JUDGMENT FROM THE DISTRICT OF HAWAII

CERTIFICATE OF SERVICE

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STEPHANIE STUCKY

A. THE QUESTIONS PRESENTED FOR REVIEW

1. Did the Ninth Circuit Court of Appeals panel err when it ruled that The District Judge did not err when he ruled that the Defendants and the State of Hawaii Department of Education did not discriminate against Petitioner due to her gender and retaliate illegally against Plaintiff-Petitioner, when she was denied a trial due to the grant of their Motion for Summary Judgment?

A. Did the Ninth Circuit Court of Appeals panel err when it ruled that while the District Judge admits the Plaintiff-Petitioner, Stephanie Stucky, did set forth a primae facie case of gender discrimination. At page 18 of his order, R.A. 4-27, that The District Judge did not err when he ruled the Plaintiff "fails to demonstrate pre-text."

B. Are not these irreconcilable differences of opinion on the material facts of the case, which are for the jury to decide? Especially here The Defendants say yes, Plaintiff says no.

C. After Plaintiff has established a primae facie case of discrimination, there must exist a Material question of Fact, whether the jury will find the reasons stated by the Defendants for discriminating against Plaintiff-Petitioner in the terms and conditions of her employment, are in fact pre-textual given the fact that a primae

facie case of discrimination was established?

D. Specifically in this case, where Plaintiff has complained of routine and annual discrimination in the distribution of department funds in favor of the male teacher to Petitioner's disadvantage. If the Art Department never actually voted to eliminate Plaintiff's music position, as Defendant principal Kilborn claimed, is that not conclusive evidence of the pre-textual nature of her motives?

No evidence of any such vote was presented by the Defendants. And Plaintiff's declaration establishes that there was none, hence the District Court and Appellate Court erred when they ruled Plaintiff had not presented sufficient evidence of pre-text to deserve a jury trial. Docket # 54. RA. Page 4-27. Declaration of Plaintiff Paragraphs 7-9, RA P 80-84.

3. Did Plaintiff-Petitioner Stucky show that she was the victim of an adverse employment action when she was suspended without pay, whether she was terminated and re-instated or not? Which the District Court concedes at page 19 of his order.

4. Did not the Appellate Court and the District judge err when they both refused to address the Disparate treatment allegations Regarding the male teacher, which Plaintiff provided evidence of? P. 20, RA. Page. 4-27.

5. Did not the Appellate Court and the District judge err when they weighed the evidence and then agreed with State's

argument of Legitimate Non-discriminatory reasons for taking their negative actions against the Plaintiff, prevented Plaintiff from having a jury trial to determine whether those reasons for disparate treatment were a pre-text or not.

Exhibit 3, Order Granting Defendant's Motion for Judgment on the Pleadings Or, In The Alternative For Summary Judgment February 15th 2007. Docket # 54. RA. Page. 4-27.

6. Did the Appellate Court and The District Judge err when they ruled that Claims Stucky failed to prove pre-text? Even when the Plaintiff's declaration establishes sufficient questions of fact as to whether the Art Department tried to eliminate her music class or whether Defendant Kilborn did it unilaterally. Which is a Material Question of fact in this case. Declaration of Plaintiff paragraph 7, in opposition to Defendant's Summary Judgment motion. R.A. page 80-84.

The Plaintiff presented sufficient evidence of whether there was no departmental vote and in fact there was a unilateral corporate decision to get her out of the school she had been teaching in for 24 years, in which she had seniority under the union contract. Discriminatory actions which also violate the seniority provisions of that contract, in a manner that was also retaliatory. Was the Plaintiff-Petitioner denied her constitutional right to a jury trial improperly.

Did the Appellate court and the District Judge err when they granted Summary Judgment and ruled against giving Plaintiff a trial on the facts material to her Title VII violation claim.

1. The court discussed the McDonald Douglas - burden shifting analysis under Title VII at page 10 of it's order. Docket # 54. RA. Page 4-27.

2. The Court acknowledged "She (Plaintiff) engaged in a Protected Activity opposing an unfair employment practice.

3. The court stated, at page 10, of it's final order that: "Both parties agree about the 1998 HCRC Complaint and related 2000 civil rights violation and Retaliation suit." Being "protected activities under the applicable civil rights laws." However, the court ignored the ongoing nature of the litigation and appeal process, which takes years and was still on going even at that time. Docket # 54. RA. Page 4-27.

7. Did not the Appellate Court err when it agreed the District Judge did not err when he wrote that the Plaintiff's actions during 2000 to 2005, of filing union grievances concerning her treatment and condition on the job, were not "protected activities", under the applicable civil rights laws?

Plaintiff's claims however, were specifically directed to specific acts of gender discrimination in the provision of goods, supplies,

services and treatment of music teaching books, tools, instruments and equipment, budgeted for her but not provided to her as it was to the male music teacher in her 2 person music department, as part of the Art Department. Declaration of Plaintiff Paragraphs 7-9, RA , P 80-84. Appendix No. 11, June 16, 2008 Ninth Circuit Court of Appeals order.

8. Were not the Plaintiff-Petitioner's right to non-discriminatory public education employment and academic freedom, which include the right to protest discriminatory treatment in teaching, and is similar to the rights upheld in HOLLISTER v. TUTTLE, 210 F.3d 1033 (9th Cir. 2000) violated when the Appellate Court and District court ruled contrary to the dictates of HOLLISTER v. TUTTLE, supra., which stated :

> "a faculty member at PSU, had a clearly established right to speak freely on public educational issues and that it was, therefore, error to recognize qualified immunity on the part of defendants alleged to have retaliated against him by denying him a promotion and pay increases. We, accordingly, reverse this part of the judgment and remand." HOLLISTER v. TUTTLE, 210 F.3d 1033 (9th Cir. 2000)

9. Thus Did not the Appellate Court

and the District Court err by ruling that Plaintiff's First Amendment actions, and related Union discriminatory treatment grievance complaints are Not protected from Retaliation under Title VII when they are connected to opposing discriminatory treatment. HOLLISTER v. TUTTLE, 210 F.3d 1033 (9th Cir. 2000).

1. Stucky complained of unequal treatment - "In the terms and conditions of her employment" as contrasted with the male teacher who was provided all aids and resources he requested, while she was denied. Declaration of Plaintiff Paragraphs 2-9, RA , P 80-84.

10. Did not the Appellate Court and The District Court err when they ruled that only the 1998 complaint and 2000 complaints were "protected activity'. Order Granting Defendant's Motion for Judgment on the Pleadings Or, In The Alternative For Summary Judgment February 15th 2007. Docket # 54. RA. Page 4-27. That unfair treatment, is further clear circumstantial evidence of discrimination in this case however.

11. Did not the Appellate Court and the District Judge err again when they ruled that the 1998 and law suit filed in 2000, which when to trial years later and was still on appeal at the time Defendants sought to eliminate Plaintiff's job, was too remote in time to be the cause of the retaliation Plaintiff claimed she was suffered at the hands of the Defendant Department of

Education, whom she was suing and her principal, it's employee. Docket # 54. RA. Page 4-27. Appendix No. 11.

12. Did not the Appellate Court and the District Judge err again when they ruled that there were insufficient temporal prerequisites to establish retaliation, when that issue is a question of fact for the jury, as stated in PORTER v. CALIFORNIA DEPT. OF CORRECTIONS, 383 F.3d 1018 (9th Cir. 2004).

13. Did not the Appellate Court and the District Judge err again when they upheld the granting of the Defendant's Motion to For Summary Judgment, holding there was insufficient proof of the Causal Connection. The Appellate Court like the District Judge ignored the fact that the 1993 EEO complaint begat the 2000 EEO law suit Complaint which went to trial and continued on appeal through 2005. Plaintiff suffered the same retaliatory and gender discriminatory treatment in the 2 music teacher department which continued from 1998 and 2000 to 2005 and indeed continued until Plaintiff was subsequently fired by the Defendants. PORTER v. CALIFORNIA DEPT. OF CORRECTIONS, 383 F.3d 1018 (9th Cir. 2004). Docket # 54. RA. Page 4-27.

14. Did not the Appellate Court and the District Judge err again when they acknowledged the fact that Defendant Kilborn testified for the Defendant D.O.E. and former principal Ayson at trial against Plaintiff. But says

since the suit was filed in 2000 there court be no retaliatory motive. But they ignore the fact the principal gave testimony against Plaintiff-Petitioner when the case finally went to trial in 2005. And the retaliation continued during 2000 to 2005. And within the next year Plaintiff filed grievances and EEO complaints of discriminatory treat, including the attempt to improperly remove Plaintiff-Petitioner from the faculty of the school, before the Defendants wrongfully suspended Plaintiff-Petitioner.

15. Did not the Appellate Court and the District Judge err again when they did not rule that some of the grievances filed by Plaintiff from 2000 to 2005, did not relate to unfair and discriminatory treatment by Defendants against Plaintiff, which is protected activity. Declaration of Plaintiff Paragraphs 7-9, RA P 80-84.

The adversarial facts during the litigation years with the Defendant D.O.E. 2000 to 2005 are clear evidence Defendants assertions of corporate restructuring are merely pre-texts for the court not to allow a jury to examine the details of the Defendants actions. RA 72-79, 80-84, Docket document No. 43. NATIONAL RAILROAD PASSENGER CORPORATION v. MORGAN, 536 U.S. 101 (2002); MATHEWSON v. ALOHA AIRLINES, INC., 82 Haw. 57 (1996) 919 P.2d 969.

See. R.A. Page 72-74. The Cover sheet of appeal brief. Showing that the D.O.E. knew well of this on going litigation. And

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therefore, this corporate knowledge is imputed to principal Kilborn for her retaliatory actions in response to having to testify to defend the former principal and the DOE in Plaintiff's prior sex discrimination and retaliation suit against the Defendant State of Hawaii Department of Education.

B. THE PARTIES TO THE PROCEEDING

1. The Plaintiff STEPHANIE STUCKY had been employed as a teacher by the Defendant STATE OF HAWAII DEPARTMENT OF EDUCATION since 1982 to 2007. The relevant events in this complaint occurred when the Plaintiff was working at Iao Intermediate School, in the County of Maui, State of Hawaii. The Plaintiff is female, a citizen of the United States, and a resident of the city of Kahului, in the County of Maui, State of Hawaii.

2. Defendant STATE OF HAWAII DEPARTMENT OF EDUCATION ("D.O.E.") is and was at all times relevant a governmental agency incorporated by the State of Hawaii, responsible for hiring, training, supervising, promoting, and disciplining employees of the D.O.E. and setting policy for the D.O.E. It administers all the public schools up to and including the secondary level in the State of Hawaii. It is sued in its official capacity.

3. Defendant PATRICIA HAMAMOTO is and was at all times relevant employed by

Defendant D.O.E. as Superintendent for all schools under Defendant D.O.E. As such, she was responsible for the administration of and setting policy for all schools under Defendant D.O.E., including Iao Intermediate School, where the Plaintiff worked. On information and belief she is and was at all times relevant a citizen of the United States and a resident of the County of Maui, State of Hawaii. She is sued in her official capacity.

4. Defendant KEN NOMURA is and was at all times relevant employed by Defendant D.O.E. as the Complex Area Superintendent for the Baldwin-Kekaulike-Maui Complex Area, which includes Iao Intermediate School, where the Plaintiff worked. As such, Defendant KEN NOMURA was responsible for the administration and supervision of all schools in the Baldwin-Kekaulike-Maui Complex Area. On information and belief he is and was at all times relevant a citizen of the United States and a resident of the County of Maui, State of Hawaii. He is sued in his official capacity.

5. Defendant CATHERINE KILBORN is and was at all times relevant employed by Defendant D.O.E. as Principal of Iao Intermediate School, in the County of Maui, State of Hawaii. As such, she was responsible for the supervision and discipline of teachers working at Iao Intermediate School, including the Plaintiff. On information and belief, she is and was at all times relevant a citizen of the United States and a resident of the

County of Maui, State of Hawaii. She is sued in both her official and individual capacities for acts she personally committed.

C. STATEMENT OF THE BASIS OF SUPREME COURT JURISDICTION

PLAINTIFF, STEPHANIE STUCKY, filed a Complaint for damages for violation of her Civil Rights, under Federal Civil Rights Laws 42 U.S.C. §§ 2000(e), Title VII and Title IX of the Education Amendments of 1972, 86 Stat. 373-375, 20 U.S.C. § 1681- 1688. , which arise under original jurisdiction, after receiving a 90 right to sue letter from the Federal EEOC and the Hawaii State Civil Rights Commission on January 3, 2006. Case Docket No. 1. RA. 1. And 42 U.S.C. 1981.

Defendant Catherine Kilborn filed a Motion for Judgment on the Pleadings on September 22, 2006. Docket No. 29. And the Defendant State of Hawaii filed a Motion for Judgment on the Pleadings or in the alternative for Summary Judgment on September 27, 2006. Docket No. 32. And Order regarding the State's Motion for Judgment on the Pleadings was entered on September 28, 2006. Docket # 35.

A hearing was held upon the Defendant State of Hawaii filed a Motion for Judgment on the Pleadings or in the alternative for Summary Judgment on November 27, 2006. Docket No 43.

On February 15, 2007 the District judge entered an order Granting Defendant's Motion for

Judgment on the Pleadings Or, In The Alternative For Summary Judgment. Docket # 54. R.A. Ex 3, Pages 28-51. A judgement was entered February 15, 2007 for Defendants. Docket # 55.

A timely appeal pursuant to Fed. R. Civ. P. 54(b); RULE 404, FRAP, 28 U.S.C. § 636(b)(1)(A) (LR 74.1) and 28 U.S.C. sec. 1292, was filed on March 9, 2006. R.A. Docket No. 56, R.A. P. 1.

On July 20, 2008 the Ninth Circuit Court of Appeals filed a Summary Order after denying Plaintiff-Petitioner a hearing affirming the February 15, 2007 the District judge entered an order Granting Defendant's Motion for Judgment on the Pleadings Or, In The Alternative For Summary Judgment. Appendix No. 11.

This Petition for Writ of Certiorari is timely filed pursuant to Rules 10, 11, 12, 13, 14, 33, 34 and 38 of the United States Supreme Court Rules.

D. STATEMENT OF THE CONSTITUTIONAL PROVISIONS, STATUTES, TREATIES AND OR REGULATIONS INVOLVED IN THE CASE

42 U.S.C. §§ 2000(e), Title VII and Title IX of the Education Amendments of 1972, 86 Stat. 373-375, 20 U.S.C. § 1681- 1688. 42 U.S.C. 1981.

E. THE CONCISE STATEMENT OF THE CASE

The Plaintiff had been working for Defendant D.O.E. as a teacher at Iao Intermediate School, in the County of Maui, State of Hawaii. She was hired by Defendant D.O.E. in 1982 until termination in 2007.

In the late 1990s and early 2000, the Plaintiff filed several Union grievances against Defendant D.O.E., its administrators, and the principle of Iao Intermediate School alleging unfair and discriminatory treatment, which violated the union contract.

On or about November 17, 1998, the Plaintiff filed an age discrimination complaint with the Hawaii Civil Rights Commission (HCRC) against Defendant D.O.E.

On or about January 11, 2000, the Plaintiff filed a retaliation discrimination complaint with the Hawaii State Civil Rights Commission against Defendant D.O.E.

After the Plaintiff filed the Union grievances and the HCRC complaints, Defendant D.O.E. began to retaliate against her for filing those complaints.

Defendant CATHERINE KILBORN constantly issued petty directives to the Plaintiff. These directives included one issued on February 17, 2005, which required the Plaintiff and only the Plaintiff to provide Defendant CATHERINE KILBORN with an explanation of her grade book markings/weights and a grading policy. Defendant CATHERINE KILBORN did not issue similar directives to any other teachers.

Defendant CATHERINE KILBORN repeatedly denied any of the Plaintiff's requests for supplies related to her work. Defendant D.O.E. had enough money in its school budget to cover these supplies. Defendant CATHERINE KILBORN did not deny other teachers' requests for supplies. The lack of supplies made it harder for Plaintiff to perform her expected duties.

Defendant CATHERINE KILBORN falsely accused the Plaintiff of discussing personnel actions with students. Defendant CATHERINE KILBORN falsely accused the Plaintiff of asking students to have their parents take action against issues such as fleas being in the school. Defendant CATHERINE KILBORN falsely accused the Plaintiff of causing a student to be late for testing. Defendant CATHERINE KILBORN's accusations against the Plaintiff have no factual basis.

The Plaintiff was removed from her usual music room and assigned to conduct music classes in the school's cafeteria. Two (2) ukaleles were stolen from the cafeteria. When the Plaintiff investigated this theft, Defendant CATHERINE KILBORN reprimanded her for it.

On or about February 25, 2005, Defendant CATHERINE KILBORN issued an official letter of reprimand to the Plaintiff. This letter of reprimand alleged that the Plaintiff failed to comply with Defendant CATHERINE KILBORN's directive issued February 17, 2005, that required the Plaintiff to provide an explanation of her grade book

markings/weights and a grading policy.

On or about April 5, 2005, Defendant CATHERINE KILBORN staff-reduced the Plaintiff's music position, thereby eliminating her job at Iao Intermediate School. Defendant KEN NOMURA concurred with Defendant CATHERINE KILBORN's decision to eliminate the Plaintiff's job, and issued the final order.

These actions committed against the Plaintiff were done in retaliation for complaints she had previously filed against her employer, and because of her sex, female.

SUBSEQUENT ACTS OF RETALIATION

The Plaintiff filed complaints with the Hawaii Civil Rights Commission and the Federal EEOC on August 3, 2005, against the Defendants for violating her civil rights, and subsequently filed a Complaint initiating action in U.S. District Court on January 3, 2006.

From the time the Plaintiff filed those complaints to this day the Defendants continue to illegally retaliate against her.

The Plaintiff filed another complaint with the Hawaii Civil Rights Commission in late January of 2006 for further harassment and retaliation. Again the Defendants illegally retaliated for the filing of that complaint.

PLAINTIFF'S SUSPENSION

In a letter dated January 27, 2006, Defendant CATHERINE KILBORN informed the Plaintiff that she would be suspended without pay.

The reason given to the Plaintiff for the suspension was that the Plaintiff allegedly failed to render aid to an injured student. This allegation was mere pretext for her suspension, an illegal act of retaliation.

PLAINTIFF'S TERMINATION

The most recent evidence of the Defendants' illegal retaliation is the Plaintiff's PEP-T Final Rating Form dated May 25, 2006, in which the Defendants rated her as "UNSATISFACTORY" in three of her five duties and as "MARGINAL" in the remaining two duties, and the Plaintiff's subsequent termination.

The Defendants gave these poor ratings to her in order to eventually use them as pretext for her unlawful termination. In a letter dated August 1, 2006, the Defendants indeed sent the Plaintiff a letter indicating that she would be terminated, and pointed to the PEP-T Final Rating Form as pretext, and in an internal memo dated August 1, 2006.

The Plaintiff, a teacher with the State of Hawaii DOE for **twenty-four (24) years**, suddenly receives "UNSATISFACTORY" ratings leading to her termination after having filed civil rights complaints.

Further telling is Defendant CATHERINE KILBORN's actions during a meeting held on May 26, 2006, to inform the Plaintiff of her PEP-T Rating. Defendant CATHERINE KILBORN's actions are described in a letter to her from Union Uni-Serv

Director Eric Nagamine.

During that meeting, Defendant CATHERINE KILBORN refused to explain or even justify the "UNSATISFACTORY" rating given to the Plaintiff. Furthermore, Defendant CATHERINE KILBORN violated Union contract by refusing to provide a copy of the verbal discussion with the Plaintiff during the meeting.

Defendant CATHERINE KILBORN then verbally agreed with Mr. Eric Nagamine that the meeting indeed was considered an "informal discussion" for the purposes of grievance procedure. Despite this, she later denied that it was. This is clearly indicated in Mr. Eric Nagamine's letter to Robyn Honda, dated June 6, 2006.

The Defendants illegally retaliated against the Plaintiff for filing civil rights complaints. They terminated the Plaintiff's employment by using pretext such as her poor PEP-T Ratings. The Plaintiff had worked for the State of Hawaii DOE for **twenty-four (24) years**.

The irreparable harm caused to the Plaintiff is enormous and increasing everyday. Termination of her employment has damaged her reputation and career as a teacher. Docket No. 1.

In Plaintiff Stephanie Stucky's Declaration In Opposition to Defendant's Summary Judgment Motion she wrote.

2. While Plaintiff is and has been employed as a music Teacher for the DOE on Maui for over 20 years, she is presently suspended by Defendant Kilborn, and locked out of the school and her class room pending termination. And principal Kilborn continues to retaliate against Plaintiff for filing grievances over union contract violations at the school, as Plaintiff had over violations caused by former principal Ayson, for whom Defendant Kilborn testified in 2nd Circuit court, as her Vice Principal.

3. Defendant Kilborn discriminated against and harassed Plaintiff in particular over this issue, even after Plaintiff responded fully.

4. Plaintiff conversed on school matters with parents, not personal ones. Specifically Defendant Kilborn's removing her from the music room, saying she is going to create a computer room and not doing so, while sending Plaintiff and 100's of music students to the old cafeteria room, unsuitable for music classes, lacking in security storage for valuable instruments, and infested with fleas. Which complaints from Plaintiff Defendant Kilborn ignored until the

parents of bitten students started complaining to her.

5. Defendant Kilborn made this decision to
move my band room, but not the other music teacher unilaterally, and then failed to implement the computer course after removing Plaintiff.

6. Defendant Kilborn removed Plaintiff from the music room, saying she was going to create a computer room and then she did not do so. She sent Plaintiff and 100's of music students to the old cafeteria room, unsuitable for music classes, lacking in security storage for valuable instruments, and infested with fleas. Which complaints from Plaintiff Defendant Kilborn totally ignored until the parents of bitten students started complaining to her directly. Defendant Kilborn still does not say what SHE did about the fleas and rats.

7. Defendant Kilborn unilaterally sought to get rid of Plaintiff, by striking her music class. The Department did not vote on it. The HSTA union had to convince her to "reconsider" by pointing out that her actions were in violation of the contract. And only after Plaintiff filed a grievance about being improperly "staff reduced" and

bounced out of the school where she has taught for 20 years, in violation of the HSTA-DOE contract, was she re-instated to the school. Actions of Defendant Kilborn that both upset and caused Plaintiff to expend time and file grievances to defend both her contract and her constitutional rights. Then throughout the next year Defendant Kilborn retaliated against Plaintiff for filing and winning this grievance, as well as filing others.

8. Defendant Kilborn routinely denied, delayed, waylaid, mislaid, forgot and re-routed Plaintiff's requested supplies, and delayed or refused to fill book requisitions, and instrument orders, from the $3000 annual portion of the music dept. budget allocated to Plaintiff.

F. DIRECT, CONCISE ARGUMENT

A. The Ninth Circuit Appellate court and the Hawaii District Judge erred when they wrote that the Plaintiff's actions during 2000 to 2005, of filing union grievances concerning her treatment and condition on the job, were not "protected activities", under the applicable civil rights laws. Plaintiff's claims however, were specifically directed to specific acts of gender discrimination in the provision of goods, supplies, services and

treatment of music teaching books, tools, instruments and equipment, budgeted for her but not provided to her as it was to the male music teacher in her 2 person music department, as part of the Art Department. Declaration of Plaintiff Paragraph 9, RA , P 80-84.

While the court is correct in stating the Plaintiff's civil complaint was filed on January 3, 2006, in The U.S. District court with reference to both the EEOC and State of Hawaii Right To Sue Letters.

The courts below ignored the facts that before the law suit involving those legal complaints were filed however, the Defendants were informed that Plaintiff had filed the EEOC administrative complaints with the Federal EEOC and State HCRC in April or May of 2005, of which Defendants were notified no later than August 2005.

Therefore, Plaintiff logically asserts that under BURLINGTON N. & S.F.R. CO. v. WHITE, 05-259 (U.S. 2006) 126 S. Ct. 2405, that the actions the Defendants took against her after receiving notice of this EEO and HCRC August 2005 were clearly in retaliation for her having engaged in protected activity, such as filing her EEO complaint. And adverse employment actions taken against Plaintiff 300 days before the April 2005 EEOC filing should be considered for discriminatory effect and motive. BURLINGTON N. & S.F.R. CO. v. WHITE, 05-259 (U.S. 2006) 126 S. Ct. 2405.

B. And the courts below further erred in refusing to consider retaliation against Plaintiff for filing union grievances of discriminatory union contract violations by the Defendants during 2000 to 2005. And then ignores more recent actions such as attempting to remove her position and her job from the school in violation of the union contract, and move her from a "music room" to a cafeteria with no locks for the instruments and fleas and rats, as well as repeated demands made upon Plaintiff to explain her grading policy. Demands not made upon other teachers, all in response to a parents grade complaint, were harassment after Plaintiff tendered her explanation.

The Appellate court's ruling ignored the Plaintiff's right to non-discriminatory public education employment and academic freedom includes the right to protest discriminatory treatment in teaching, is similar to the rights upheld in HOLLISTER v. TUTTLE, 210 F.3d 1033 (9th Cir. 2000) where the court ruled:

> "a faculty member at PSU, had a clearly established right to speak freely on public educational issues and that it was, therefore, error to recognize qualified immunity on the part of defendants alleged to have retaliated against him by denying him a promotion and pay increases. We, accordingly, reverse this part of the

judgment and remand." HOLLISTER v. TUTTLE, 210 F.3d 1033 (9th Cir. 2000)

2. Teachers have a right to speak to parents

and students about matters affecting their education and safety. The teacher has a constitutional right under Title VII to be protected from retaliation for speaking out and filing administrative complaints about unfair treatment on the job. Thus the Appellate Court was in error ruling that Plaintiff's First Amendment actions, and related Union discriminatory treatment grievance complaints are Not protected from Retaliation under Title VII when they are connected to opposing discriminatory treatment. HOLLISTER v. TUTTLE, 210 F.3d 1033 (9th Cir. 2000).

3. Plaintiff Stucky complained of unequal

treatment - "In the terms and conditions of her employment" as contrasted with the male teacher who was provided all aids and resources he requested, while she was denied. This went on for years, culminating with her attempted removal improperly from the school by Defendants both before the 2005 and 2006 school years through different improper maneuvers, that were later rescinded after Plaintiff protested and filed a union grievance.

In 2005, Defendant Kilborn attempted to eliminate Plaintiff's music teacher position and therefore her from the school, in violation of the

HSTA-DOE union contract.

And right after she lost that union arbitration, Defendant Kilborn and the DOE decided to create bad evaluations of Plaintiff and fire her for the school year 2006. Therefore, Plaintiff Stucky had to protest these improper actions by the Defendants, to keep from being abused and lose her job in violation of the rules repeatedly. And the Defendants continue to retaliate against her for doing so. Declaration of Plaintiff Paragraph 9, RA , P 80-84.

4. The Appellate Court erred when they ruled

that only the 1998 complaint and 2000 complaints were "protected activity'. Order Granting Defendant's Motion for Judgment on the Pleadings Or, In The Alternative For Summary Judgment February 15th 2007. Docket # 54. RA. Ex 2. That unfair treatment, is further clear circumstantial evidence of discrimination in this case however.

The Appellate court and District Judges erred again when they ruled that the 1998 and law suit filed in 2000, which when to trial years later and was still on appeal at the time Defendants sought to eliminate Plaintiff's job, was too remote in time to be the cause of the retaliation Plaintiff claimed she was suffered at the hands of the Defendant Department of Education, whom she was suing and her principal, it's employee.

That was an erroneous conclusion for

causation, not temporal prerequisites are the real issue as stated in PORTER v. CALIFORNIA DEPT. OF CORRECTIONS, 383 F.3d 1018 (9th Cir. 2004).

> Although a lack of temporal proximity may make it more difficult to show causation, "circumstantial evidence of a `pattern of antagonism' following the protected conduct can also give rise to the inference." Kachmar v. SunGard Data Sys., Inc., 109 F.3d 173, 177 (3rd Cir. 1997) (citation omitted).
>
> The Third Circuit explained: It is important to emphasize that it is causation, not temporal proximity itself, that is an element of plaintiff's prima facie case, and temporal proximity merely provides an evidentiary basis from which an inference can be drawn. The element of causation, which necessarily involves an inquiry into the motives of an employer, is highly context-specific. When there may be valid reasons why the adverse employment action was not taken immediately, the absence of immediacy between the cause and effect does not disprove causation.
>
> Our cases are consistent with this approach. In Coszalter v. City of Salem, 320 F.3d 968, 977-78 (9th Cir. 2003), we cautioned that a "specified time period

cannot be a mechanically applied criterion. A rule that any period over a certain time is per se too long (or, conversely, a rule that any period under a certain time is per se short enough) would be unrealistically simplistic." In Winarto v. Toshiba America Electronics Components, Inc., 274 F.3d 1276, 1287 n. 10 (9th Cir. 2001), the majority rejected the dissent's argument that Breeden precluded the inferences drawn by the jury below. PORTER v. CALIFORNIA DEPT. OF CORRECTIONS, 383 F.3d 1018 (9th Cir. 2004)

G. The Appellate court erred when it upheld the grant of the Defendant's Motion to Dismiss claiming there was insufficient proof of the Causal Connection. The Appellate and District Court Judges improperly ignore the fact that the 1993 EEO complaint begat the 2000 EEO law suit Complaint which went to trial and continued on appeal in 2005. It is the same retaliatory and gender discriminatory treatment of the 2 music teacher activity continued from 1998 and 2000 to 2005 and indeed continues to the present day. PORTER v. CALIFORNIA DEPT. OF CORRECTIONS, 383 F.3d 1018 (9th Cir. 2004)

H. The Appellate Judges also acknowledged the fact that Defendant Kilborn testified for the Defendant D.O.E. and former principal Ayson at trial against Plaintiff. But they

say since the suit was filed in 2000 there court be no retaliatory motive. But this ignores the fact the testimony and trial were in 2005. And the retaliation continued during 2000 to 2005, which is which Plaintiff filed grievances, since she was already in court and knew that was very expensive.

I. The District Judge erred when he did not rule that some of the grievances filed by Plaintiff from 2000 to 2005, did not relate to unfair and discriminatory treatment by Defendants against Plaintiff, which is protected activity. Declaration of Plaintiff Paragraphs 7-9.

J. The District Judge erred when he ruled the "school made the decision to eliminate Plaintiff's music teacher class and position. That is false. Defendant Kilborn was "the school." The Plaintiff's Art department did not vote to move the Plaintiff or eliminate her music class. Defendant Kilborn did that unilaterally. Declaration of Plaintiff Paragraph 7. The District court improperly ignores the discriminatory treatment and harassment plaintiff complained of in the years 2000 to 2005. Defendant Kilborn, as V.P. of the school administration has a connection to those complaints. One of her first acts as principal is to attempt improperly to get rid of Plaintiff. It is clearly a question of fact for the jury under the circumstances whether those actions were retaliatory. Exhibit 3, Order Granting Defendant's Motion for Judgment on the Pleadings Or, In The Alternative

For Summary Judgment February 15th 2007. Docket # 54. RA. Page. 4-27.

The adversarial facts during the litigation years with the Defendant D.O.E. 2000 to 2005 are clear evidence Defendants assertions of corporate restructuring are merely pre-texts for the court not to allow a jury to examine the details of the Defendants actions. RA 71-83, 89-100, Docket document No. 43. NATIONAL RAILROAD PASSENGER CORPORATION v. MORGAN, 536 U.S. 101 (2002); MATHEWSON v. ALOHA AIRLINES, INC., *82 Haw. 57* (1996) 919 P.2d 969.

C. The District Judge erred when he ruled that the Defendant State of Hawaii Department of Education was not liable for gender discrimination and retaliation in its actions towards Plaintiff.

1. The Appellate court and District Judge admit the Plaintiff Stephanie Stucky set forth a primae facie case of gender discrimination. See page P 18 of order, R.A. Ex. 3,

2. The District Judge erred when he rule the Plaintiff "fails to demonstrate pre-text." But these Differences of opinion, whether the facts which establish the primae facie case or sufficient to establish

3. Plaintiff Stucky has shown adverse employment action in Suspension without pay. Whether she was terminated and re-instated or not. Which the District Court concedes.

4. However, the District judge erred when he refused to address the Disparate treatment allegations Regarding the male teacher, which Plaintiff provided evidence of to prove during the grievance process. P. 20.

> Amid a rising tide of retaliatory job bias claims and last year's Robinson v. Shell Oil Co., 519 U.S. 337 (1997) Supreme Court decision, the EEOC has issued guidelines to help litigators interpret statutes involving retaliation and employment discrimination.
>
> The manual describes what constitutes protected activity, what "adverse actions" by employers can be challenged as retaliatory, and what evidence is needed to prove those actions were taken because of protected activity. (EEOC, EEOC Compliance Manual, No. 915.003 (May 20, 1998); available at http://www.eeoc.gov/docs/retal.txt or by writing to EEOC, Office of Communications and Legislative Affairs, 1801 L St. N.W., Washington, DC 20507.)
>
> The EEOC said the number of charges alleging retaliation has more than doubled in the past several years. In 1991, the commission received more than 7,900 claims, and, in 1997, the number jumped to more than 18,100.

The EEOC emphasized that protected activity includes opposing discrimination in the workplace as well as participating in the complaint process. For example, employees who believe they are the target of discriminatory practices-as well as friends and coworkers who may have been unlawfully deterred from testifying on the employee's behalf-can challenge retaliatory acts by employers. (Emphasis added)

The agency also noted that **the underlying discrimination claim does not have to be reasonable or valid to make a case for employer retaliation.** To require otherwise, "would chill the rights of all individuals protected by the anti-discrimination statutes," the guidance said. (Emphasis added)

In defining what constitutes adverse actions by employers, the EEOC included negative job references. This guidance follows the recent Robinson case (519 U.S. 337 (1997)), where the Supreme Court found that federal civil rights laws protect former-not just current-workers from retaliation by employers who have been charged with discrimination. (Discrimination provision expanded to cover former

workers, TRIAL, May 1997, at 88.)

Other **adverse actions include "significant retaliatory treatment that is reasonably likely to deter protected activity." The agency said there is no requirement that actions against employees "materially affect the terms, conditions, or privileges of employment."** (Emphasis added)

The Ninth Circuit, has found that the degree of harm suffered by an individual goes to the issue of damages, not liability. (Hashimoto v. Dalton, 118 F.3d 671, 676 (9th Cir. 1997).

In terms of proving a causal connection between protected activity and an employer's adverse action, the EEOC said evidence may be direct-which the agency noted is rarely present-or circumstantial.

"A violation is established . . . if the respondent fails to produce evidence of a legitimate, nonretaliatory reason for the challenged action, or if the reason advanced by the respondent is a pretext to hide the retaliatory motive."

5. The District judge erred when he agreed with State's argument of Legit Non-

discriminatory reasons for taking their negative actions against the Plaintiff.

A. Parental complaints.

2. Plaintiff's set up Music Room moved for new computer room, that was not constructed.

C. The School proposed abolishing music and her electives for music.

(But they lost the grievance over that because it violated DOE rules.

Declaration of Plaintiff para 2-9 RA 80-84. Order Granting Defendant's Motion for Judgment on the Pleadings Or, In The Alternative For Summary Judgment February 15th 2007.. Docket # 54. RA. Page. 4-27.

D. The Appellate court and the District Judge erred when they ruled that Petitioner Stucky failed to prove pre-text.

1. The lower courts erred when they claim the one on one comparison in the treatment of the only mail music teacher with that of the only female music teacher in the school is too small a sample. Those are the discriminatory facts of this case at this school.

The ruling is a clear misunderstanding of the law of discrimination. Those discriminatory facts ARE SUFFICIENT PROOF OF PRE-TEXT.

2. The lower courts erred in claiming that because Stucky did not prove other female

teachers in other departments were treated as badly as she there was no discrimination proved on the basis of gender.

However, those non-music teachers were not similarly situated regarding budgetary entitlements as music teachers.

The Plaintiff's declaration and the history of complaints and harmful actions taken by Defendants against Plaintiff over the years establish a pattern of a "hostile and retaliatory work environment for Plaintiff. Over which the District court had jurisdiction through Title VII, as well as Title IX and pendent jurisdiction through H.R.S. 378-2. And for which causes of action Plaintiff established a prima facie case, and sufficient evidence Defendants stated reasons were pre-texts for discrimination in a hostile work environment. Exhibit 3, Order Granting Defendant's Motion for Judgment on the Pleadings Or, In The Alternative For Summary Judgment February 15th 2007. Docket # 54. RA. Page. ?

B. At the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. *See* T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n., 809 F.2d 626, 630-31 (9th Cir. 1987).

> However, once the moving party meets the requirements of Rule 56 by showing there is an absence of

evidence to support the non-moving party's case, the burden shifts to the party resisting the motion, who "must set forth specific facts showing that there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986).

We review the district court's order granting summary judgment de novo, drawing "all reasonable inferences supported by the evidence in favor of the non-moving party." Villiarimo v. Aloha Island Air, Inc. 281 F.3d 1054, 1061 (9th Cir. 2002).

C. "In reviewing an order denying or granting summary judgment, we must determine, viewing the evidence in the light most favorable to the non-moving party, whether there are any genuine issues of material fact and whether the district court correctly applied the substantive law." Ray v. Henderson, 217 F.3d 1234, 1239-40 (9th Cir. 2000).

D. We review a Rule 12(b)(6) dismissal for failure to state a claim de novo, and accept as true all well-pleaded allegations of fact in the Complaint, construing them in the light most favorable to Plaintiff. Roe v. City of San Diego, 356 F.3d 1108, 1111-12 (9th Cir. 2004). Dismissal "is appropriate if it

appears beyond doubt that (Plaintiff) can prove no set of facts in support of his claim which would entitle him to relief." *Id.* at 1112 (internal quotation marks and citation omitted).

E. To establish a prima facie case of discrimination, a Title VII plaintiff must offer evidence that "give(s) rise to an inference of unlawful discrimination." Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). The prima facie case may be established "either through the framework set forth in McDonnell Douglas Corp. v. Green or . . . (through) direct evidence of discriminatory intent." Vasquez v. County of L.A., 307 F.3d 884, 889 (9th Cir. 2002) (citation footnote omitted). Establishing a prima facie Title VII case in response to a motion for summary judgment requires only "minimal" proof and "does not even need to rise to the level of a preponderance of the evidence." Wallis v. J.R. Simplot Co., 26 F.3d 885, 889 (9th Cir. 1994); see also Lowe v. City of Monrovia, 775 F.2d 998, 1009 (9th Cir. 1985) ("(S)ummary judgment for the defendant will ordinarily not be appropriate on any ground relating to the merits because the crux of a Title VII dispute is the `elusive factual question of intentional

discrimination.'" (quoting Burdine, 450 U.S. at 255 n. 8)).

WHITE v. BURLINGTON NORTHERN & SANTA FE RAILWAY, 364 F.3d 789 (6th Cir. 2004) SCHEFKE v. RELIABLE COLLECTION AGENCY, LTD., 96 Haw. 408 (2001) And under 42 U.S.C. 1981 PAVON v. SWIFT TRANSP. CO., INC., 192 F.3d 902 (9th Cir. 1999) Washington v. Garrett, 10 F.3d 1421, 1434 (9th Cir. 1994). LYONS v. ENGLAND, 307 F3rd 1092 (9th Cir. 2002); MATHEWSON v. ALOHA AIRLINES, INC., *82 Haw. 57* (1996) 919 P.2d 969.

The actions of the Defendants equal continuous harassment of Plaintiff from 1998 through 2005, when she filed this suit. The District court's ignoring of the administrative complains of harassment and unequal treatment filed by Plaintiff is improper. And so is his argument that the civil suit filed by Plaintiff in 2000, which went to trial in 2004 and which was still on appeal in 2005 and 2006, were not a direct or circumstantial cause of the retaliation suffered by Plaintiff. Even if there were no subsequent complaints of harassment and discriminatory union contract violations Plaintiff's complained of during 2000 to 2005, the fact that the suit filed in 2000 was on going and involved defendant Kilborn as a DOE interested witness, was improperly glossed over by the court. As the

Ninth circuit ruled in PORTER v. CALIFORNIA DEPT. OF CORRECTIONS, 383 F.3d 1018 (9th Cir. 2004).

> Breeden cannot be read as holding that causality is dependent, as a matter of law, on temporal proximity. Although a lack of temporal proximity may make it more difficult to show causation, "circumstantial evidence of a `pattern of antagonism' following the protected conduct can also give rise to the inference." Kachmar v. SunGard Data Sys., Inc., 109 F.3d 173, 177 (3rd Cir. 1997) (citation omitted).
>
> The Third Circuit explained: It is important to emphasize that it is causation, not temporal proximity itself, that is an element of plaintiff's prima facie case, and temporal proximity merely provides an evidentiary basis from which an inference can be drawn. The element of causation, which necessarily involves an inquiry into the motives of an employer, is highly context-specific. When there may be valid reasons why the adverse employment action was not taken immediately, the absence of immediacy between the cause and effect does not disprove causation.
>
> Our cases are consistent with this

approach. In Coszalter v.City of Salem, 320 F.3d 968, 977-78 (9th Cir. 2003), we cautioned that a "specified time period cannot be a mechanically applied criterion. A rule that any period over a certain time is per se too long (or, conversely, a rule that any period under a certain time is per se short enough) would be unrealistically simplistic." In Winarto v. Toshiba America Electronics Components, Inc., 274 F.3d 1276, 1287 n. 10 (9th Cir. 2001), the majority rejected the dissent's argument that Breeden precluded the inferences drawn by the jury below. PORTER v. CALIFORNIA DEPT. OF CORRECTIONS, 383 F.3d 1018 (9th Cir. 2004)

6. CAUSE OF ACTION FOR VIOLATION OF STATE OF HAWAII FAIR EMPLOYMENT ACT SHOULD NOT BE DISMISSED

The actions of the Defendants mentioned above also violate the State of Hawaii Fair Employment Act Section 368 & 378 of the Hawaii Revised Statutes.

Under Schefke v. Reliable Collection Agency, Ltd., 96 Haw. 408, 32 P.3d 52 (Haw. 2001), the Hawaii Federal District Court clearly had pendent jurisdiction of the non-payment of wages claim under H.R.S. 378-2.. And the

District Court has original jurisdiction of the Plaintiff's lost wages claim under Title VII, 42 U.S.C. 2000(e) and 42 U.S.C. 1981. And for which causes of action Plaintiff established a prima facie case, and sufficient evidence Defendants stated reasons were pre-texts for discrimination in a hostile work environment PAVON v. SWIFT TRANSP. CO., INC., *192 F.3d 902* (9th Cir. 1999); GOFF v. CONTINENTAL OIL CO., 78 F.2d 593 (5th Cir. 1982); MATHEWSON v. ALOHA AIRLINES, INC., *82 Haw. 57* (1996) 919 P.2d 969.

The HCRC Rt to Sue letter is dated Sept. 23, 2005 - Complaint filed Jan. 3, 2006. After a holiday. Plaintiff Stephanie Stucky actually received the letter about a week later on Maui on Sept. 31, 2005 a Saturday giving her till Dec. 31, 2005 to file, which fell on a Saturday holiday week-end. To be a bit more precise and accurate than the general declaration filed Dec. 4, 2005 by counsel, after discussing it with Plaintiff. Therefore, the District court should have exercised it's pendent jurisdiction. Docket No. 45.

The NATIONAL RAILROAD PASSENGER CORPORATION v. MORGAN, 536 U.S. 101 (2002) & MORGAN v. NATIONAL R.R. PASSENGER, 300 F.3d 1144 (9th Cir. 2002) case holds that Plaintiff can present both direct and circumstantial evidence to prove his case of illegal discrimination on the job, and that includes all of the evidence of an "illegal pattern or practice of harassment or of a "hostile work environment" on the job even

though some of those facts may lie well outside the 300 day line. If they are similar in kind or circumstance relevant to actions of harassment that occurred within the 300 day line, they are admissible at trial.

> In Morgan, the Supreme Court held that "discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges," 122 S.Ct. at 2072, **while "a hostile work environment claim . . . will not be time barred so long as all acts which constitute the claim are part of the same unlawful ≤employment≥ practice and at least one act falls within the time period,"**[fn6] id. at 2077. Abner J. Morgan, Jr., brought claims of disparate treatment, retaliation, and hostile work environment ≤racial≥ ≤harassment≥ against Amtrak, alleging inter alia that he was repeatedly denied training opportunities, subjected to unwarranted disciplinary action, and unlawfully discharged. LYONS v. ENGLAND, 307 F3rd 1092 (9th Cir. 2002.

The Plaintiff is entitled to present all of these related and interlocking facts of harassment and unfair treatment at the trial to present both the direct and the circumstantial evidence of discrimination in his case.

At the initial stage of a case of

disparate treatment, appropriate background evidence will be evidence, either direct or circumstantial, that, when combined with evidence of the employer's present conduct, "give(s) rise to an inference of unlawful discrimination." Burdine, 450 U.S. at 253. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 511 (1993) (quoting Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981)).

The district court will sometimes be required to engage in Rule 403 balancing when determining the admissibility of evidence of time-barred acts, Fed.R.Evid. 403 (stating that otherwise relevant evidence may be excluded if its probative value is substantially outweighed by its potential for unfair prejudice or confusion of the issues), **bearing in mind that, in discrimination cases, probative evidence of wrongful intent will necessarily prejudice the defendant's case.**(fn13) LYONS v. ENGLAND, 307 F3rd 1092 (9th Cir. 2002.

Hence, Plaintiff has the right to present all of the evidence of her mistreatment on the job and after termination to the jury to determine whether Defendant pre-text for this discrimination is believable under the circumstances. Which it is not. Since, the very fact of her being the only employee repeatedly subjected to

elimination from the school staff, after filing a gender discrimination suit over unequal treatment, which continued and was on going, raises a primae facie case of discrimination, along with the other evidence harassment.

of The fact that the defendant may be able to produce evidence that the plaintiff was fired for a lawful reason **just creates an issue of fact: what was the true cause of the discharge? Evidence, though not conclusive, that the cause was retaliation should be enough to entitle the plaintiff to a jury trial unless the defendant can produce uncontradicted evidence that he would have fired the plaintiff anyway, in which event the defendant's retaliatory motive, even if unchallenged, was not a but-for cause of the plaintiff's harm**. Price Waterhouse v. Hopkins, 490 U.S. 228, 244- 45 (1989); Miller v. Illinois Dept. of Corrections, 107 F.3d 483, 484 (7th Cir. 1997); Visser v. Packer Engineering Associates, Inc., 924 F.2d 655, 658 (7th Cir. 1991) (en banc); Brown v. East Mississippi Electric Power Ass'n, 989 F.2d 858, 862 (5th Cir. 1993)., to determine whether Defendant pre-text for this discrimination is believable under the circumstances. Which it is not. COSTA v. DESERT PALACE, 299 F.3d 838 (9th Cir.

2002)

These facts are clear evidence Defendants assertions of departmental restructuring are merely pre-texts for the court not to allow a jury to examine the details of the Defendants actions. RA 89-138. NATIONAL RAILROAD PASSENGER CORPORATION v. MORGAN, 536 U.S. 101 (2002); MATHEWSON v. ALOHA AIRLINES, INC., 82 Haw. 57 (1996) 919 P.2d 969. The actions of the Defendants mentioned above also violate the State of Hawaii Fair Employment Act Section 368 & 378 of the Hawaii Revised Statutes.

7. CONCLUSION

The Appellate court came to an erroneous conclusion on the causation issues in this case. For causation, not temporal prerequisites are the real issue as stated in PORTER v. CALIFORNIA DEPT. OF CORRECTIONS, 383 F.3d 1018 (9th Cir. 2004).

> Although a lack of temporal proximity may make it more difficult to show causation, "circumstantial evidence of a `pattern of antagonism' following the protected conduct can also give rise to the inference." Kachmar v. SunGard Data Sys., Inc., 109 F.3d 173, 177 (3rd Cir. 1997) (citation omitted).
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important to emphasize that it is causation, not temporal proximity itself, that is an element of plaintiff's prima facie case, and temporal proximity merely provides an evidentiary basis from which an inference can be drawn. The element of causation, which necessarily involves an inquiry into the motives of an employer, is highly context-specific. When there may be valid reasons why the adverse employment action was not taken immediately, the absence of immediacy between the cause and effect does not disprove causation.

Our cases are consistent with this approach. In Coszalter v. City of Salem, 320 F.3d 968, 977-78 (9th Cir. 2003), we cautioned that a "specified time period cannot be a mechanically applied criterion. A rule that any period over a certain time is per se too long (or, conversely, a rule that any period under a certain time is per se short enough) would be unrealistically simplistic." In Winarto v. Toshiba America Electronics Components, Inc., 274 F.3d 1276, 1287 n. 10 (9th Cir. 2001), the majority rejected the dissent's argument that Breeden precluded the inferences drawn by the jury below. PORTER v.

CALIFORNIA DEPT. OF CORRECTIONS,
383 F.3d 1018 (9th Cir. 2004)

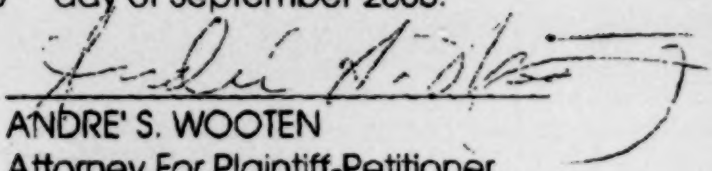
The District Judge erred when he granted the Defendant's Motion to Dismiss claiming there was insufficient proof of the Causal Connection. The Appellate court erred in affirming that decision.

The lower court Judges ignore the fact that the 1993 EEO complaint begat the 2000 EEO law suit Complaint which went to trial and continued on appeal in 2005. It is the same retaliatory and gender discriminatory treatment prevalent in the school's 2 music teacher Art Department, which was complained of by the Plaintiff-Petitioner in her EEOC complaint of 1998 and civil suit filed in 2000 to 2005 and indeed continues to the present day. PORTER v. CALIFORNIA DEPT. OF CORRECTIONS, 383 F.3d 1018 (9th Cir. 2004). Docket # 54. RA. Page 4-27.

Wherefore, Plaintiff-Petitioner, Stephanie Stucky respectfully requests that the U. S. Supreme Court grant this Petition for Certiorari and reverse and rescind the Ninth Circuit Court of Appeals and the Hawaii District Court's order granting the State of Hawaii Department of Education and Defendant Katherine Kilborn's Motions for Summary Judgment, and grant Plaintiff a trial by jury upon her gender discrimination and Civil Rights retaliation complaint filed in the Hawaii District Court on

January 3, 2006.

This 15th day of September 2008.

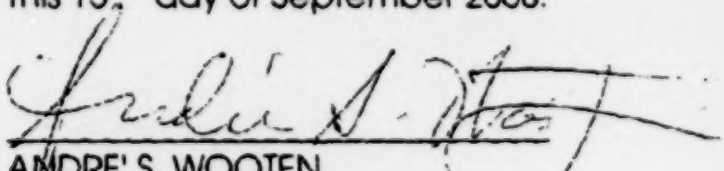


ANDRE' S. WOOTEN
Attorney For Plaintiff-Petitioner,
STEPHANIE STUCKY

9. STATEMENT OF RELATED CASES

Plaintiff-Appellant, STEPHANIE STUCKY is not aware of any related cases pending presently before the U. S Supreme Court pertaining to these issues.

This 15th day of September 2008.



ANDRE' S. WOOTEN
Attorney For Plaintiff-Petitioner,
STEPHANIE STUCKY

28-2.3 Attorneys Fees

Plaintiff seeks attorney's fees in this Civil Rights Action pursuant to section 706(k) of Title VII, 42 U.S.C. §§ 2000e-5(k), the Civil Rights Attorneys Fees Awards Act of 1976, 42 U.S.C. §§ 1988, and Ninth Circuit Rule 28-2.3.

NO.

IN THE UNITED STATES SUPREME COURT

STEPHANIE STUCKY,

Plaintiff - Appellee,

V.

DEPARTMENT OF EDUCATION, STATE OF HAWAII, ET. AL.

Defendants - Appellants.

CERTIFICATE OF COMPLIANCE

The undersigned counsel for Appellee certifies that the Plaintiff-Appellant's Opening Brief is printed in a proportionate space type face in a 12 point Century Gothic font, and contains 8,956 words and 41 pages, excluding the Cover page, Table of Contents, Certificate of Service and Certificate of Compliance.

DATED: Honolulu, September 17, 2008.

ANDRE' S. WOOTEN
Attorney For Plaintiff-Petitioner,
STEPHANIE STUCKY

G. THE APPENDIX

ORDER DATED JUNE 20, 2008 DENYING PLAINTIFF-APPELLANT STEPHANIE STUCKY'S APPEAL AND AFFIRMING THE ORDER GRANTING DEFENDANT-APPELLEES' MOTION FOR SUMMARY JUDGMENT

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEPHANIE STUCKY,	)	No. 07-15527
	)	
Plaintiff-Appellant;	)	D.C. No.
	)	CV-06-00002-
v.	)	JMS/lek
	)	
DEPARTMENT OF EDUCATION, STATE OF HAWAII; PATRICIA HAMAMOTO, Superintendent; KEN NOMURA, Complex Area Superintendent; CATHERINE KILBORN, Principal;	)	
	)	
Defendants-Appellees.	)	

Appeal from the United States District Court
for the District of Hawaii
J. Michael Seabright, District Judge, Presiding

Submitted June 18, 2008
Honolulu, Hawaii

Before: GOODWIN, RYMER, AND IKUTA, Circuit Judges.

The district court did not err when it granted summary judgment to the defendants Stucky's Title VII retaliation claim. Contrary to Stucky's assertions, the last "protected activity" that she engaged in for purposes of her Title VII retaliation claim was the 2000 retaliation and discrimination complaint filed with the Hawaii Civil Rights Commission ("HCRC"). See Davis v. Team Elec. Co., 520 F.3d 1080, 1093-94 (9th Cir. 2008). The union grievances Stucky filed after 2000 do not qualify as protected activities because the record does not establish that they were lodged in opposition to Title VII violations. See 42 U.S.C. Section 2000e-3; Learned v. City of Bellevue, 860 F.2d 928, 932, (9th Cir. 1988) ("[T]he opposed conduct must fairly fall within the protection of Title VII to sustain a claim of unlawful retaliation."). Moreover, the initiation of the present lawsuit is not a protected activity for purposes of Stucky's retaliation claim in this case. In her complaint, Stucky did not allege that she was retaliated against for initiating the present lawsuit. As the district court noted, Stucky has filed a separate civil action in district court to address her contentions that she was retaliated against for initiating the present action.

The first act of alleged retaliation that Stucky points to took place in February 2005, that is, five years after Stucky's last protected activity. Even assuming that the alleged acts of retaliation qualify as adverse employment actions under the broad standard articulated in Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53, 67-70 (2006), Stucky has not made any showing of a casual link between her protected activities and the

adverse employment actions taken by the defendants. See Freitag v. Ayers, 468 F.3d 528, 541 (9th Cir. 2006). The five-year gap between Stucky's last protected activity and her first alleged act of retaliation is too long to substantiate Stucky's claims that she was retaliated against for engaging in protected activity. See, e.g. Vasquez v. County of Los Angeles, 349 F.3d 634, 646 (9th Cir. 2004) (a thirteen month temporal distance is too long to support a causal link). Moreover, Stucky has not introduced any other "evidence of surrounding circumstances that show a retaliatory motive." Id. Finally, the fact that Stucky has other litigation pending is not sufficient evidence that defendants had a retaliatory motive. In sum, taking Stucky's factual allegations as true, and drawing all legitimate inferences therefrom in her favor, we conclude that Stucky has not established a "genuine issue[] of material fact" as to whether she was retaliated against in violation of Title VII. Davis, 520 F.3d at 1088.

The district court also did not err in granting summary judgment to the defendants on Stucky's Title IX gender discrimination claim. "[W]hen evidence to refute the defendant's legitimate explanation is totally lacking, summary judgment is appropriate even though plaintiff may have established a minimal prima facie case based on a McDonnell Douglas type assumption." Cornwell v. Electra Cent. Credit. Union, 439 F.3d 1018, 1029 n.8 (9th Cir. 2006) (internal quotation marks omitted). Stucky succeeded in making a prima facie showing by adducing evidence that she was treated differently than a similar situated male music teacher. However, once the defendants proffered

legitimate, non-discriminatory reasons for this disparate treatment, Stucky failed to produce any evidence that the defendants' reasons were pretextual. See Dominguez-Curry v. Nev. Transp. Dept., 424, F.3d 1027, 1037 (9th Cir. 2005) (to survive summary judgment, the plaintiff "must produce sufficient evidence to raise a genuine issue of material fact as to whether the employer's proffered nondiscriminatory reason is merely a pretext for discrimination"). Although "[t]he same evidence can be used to establish a prima facie case and to create a genuine issue regarding whether the employer's explanations are prextextual," Strother v. S. Cal. Permanente Med. Group, 79 F.3d 859, 870 (9th Cir. 1996), here Stucky failed to introduce any evidence from which a reasonable jury could conclude that the defendants undertook the challenged employment

actions because of Stucky's sex, see Cornwell, 439 F.3d at 1028. Accordingly, the district court did not err in granting summary judgment to the defendants on the Title IX claim. See id. Finally, the district court did not err in declining to exercise supplemental jurisdiction over Stucky's state-law claims. District courts may exercise their discretion under 28 U.S.C. section 1367(c)(3) and decline to address pendant state-law claims after they have granted summary judgment to the defendant on the federal claims. See Trs. of Constr. Indus. & Laborers Health & Welfare Trust v. Desert Valley Landscape & Main., Inc. 333 F.3d 923, 926 (9th Cir. 2003).

AFFIRMED

NO.

IN THE UNITED STATES SUPREME COURT

STEPHANIE STUCKY,

Plaintiff - Appellee,

V.

DEPARTMENT OF EDUCATION, STATE OF HAWAII, ET. AL.

Defendants - Appellants.

CERTIFICATE OF SERVICE

I Hereby certify that a copy of the foregoing was served upon THE OFFICE OF THE ATTORNEY FOR DEFENDANTS ON September 18, 2008 by:

( ) Delivering same, postage prepaid,

(x) Delivering to:

TO: OFFICE OF THE ATTORNEY GENERAL
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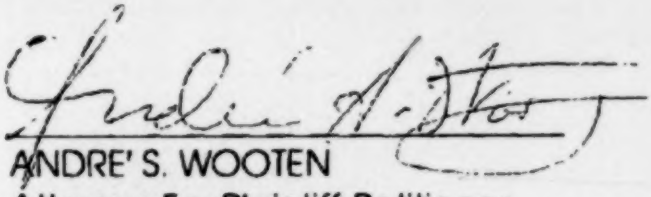
DATED: HONOLULU, HAWAII, September 18, 2008.



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